

**ORDINANCE NO. 07-85**

ORDINANCE OF THE MAYOR AND THE CITY COUNCIL OF THE CITY OF HIALEAH, FLORIDA AMENDING CHAPTER 6 ENTITLED "ALCOHOLIC BEVERAGES", ARTICLE III. REGULATIONS, BY REVISING HIALEAH CODE § 6-66 ENTITLED "DISTANCE SEPARATIONS REQUIREMENTS; RESTRICTIONS" TO PROVIDE FOR MORE COMPREHENSIVE AND ENFORCEABLE REGULATIONS FOR RESTAURANT OPERATORS THAT SERVE BEER, WINE OR ALCOHOLIC BEVERAGES AND CREATE A PRESUMPTION OF NON-COMPLIANCE; REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT HERewith; PROVIDING PENALTIES FOR VIOLATION HEREOF; PROVIDING FOR INCLUSION IN CODE; PROVIDING FOR A SEVERABILITY CLAUSE AND PROVIDING FOR AN EFFECTIVE DATE.

**WHEREAS**, the general purpose and intent of this ordinance is to provide proper zoning regulations in the best interest of the health, safety, welfare and aesthetics of the community and the proper administration of its government; and

**WHEREAS**, the specific purpose of this ordinance is to create more comprehensive and enforceable regulations and a presumption of non-compliance to specifically target business operators who under the guise of operating a bona fide restaurant conduct business operations that are detrimental to the health, safety, welfare and quality of life of the community; and

**WHEREAS**, the City finds, based on prior documented activities and police reports, that restaurant operators who violate the City Code also violate applicable the State standards and requirements for the preparation and service of food for consumption by the public.

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND THE CITY COUNCIL OF THE CITY OF HIALEAH, FLORIDA, THAT:

**Section 1:** Chapter 6 entitled "Alcoholic Beverages", Article III. Administration, of the Code of Ordinances of the City of Hialeah, Florida, by revising Hialeah Code § 6-66 entitled "Distance separation requirements; restrictions" is hereby amended to read as follows:

## **Chapter 6**

### **ALCOHOLIC BEVERAGES**

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#### **ARTICLE III. REGULATIONS**

##### **Sec. 6-66. Distance separation requirements; restrictions.**

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(b) Restaurants, holding a 5812 series occupational license, shall not sell, offer for sale, deliver or serve alcoholic beverages, wine, and beer for consumption or use on the premises, except as follows:

(1) For the sale and/or on-premises consumption of wine and beer, the holder of a 5812 series occupational license to operate the restaurant (referred to as the "licensee") must obtain a state 2-COP license and comply with the following:

a. The sale of beer and wine must be incidental to the sale and consumption of food. The restaurant must derive at least 51 percent of its gross revenue from the sale of food and nonalcoholic beverages. The required percentage must be maintained on a daily basis. The restaurant operator shall not deflate the price of beer and wine or inflate the price of the served meal from what would be the regular price for the beer, wine, or meal served by a similar establishment in the City as a means or method of meeting the minimum required percentage of gross

revenue required by this subpart.

b. Records of all purchases and gross sales of food and non-alcoholic beverages must be maintained separately from records of all purchases and gross sales of beer and wine.

c. The records must be clear and legible and must be kept on the premises. The restaurant operator must immediately comply with any requests by the city to audit or inspect the records for purposes of verifying compliance with the required gross revenue percentage.

d. No beer or wine shall be sold between the hours of 1:00 a.m. and 8:00 a.m. on any day of the week. Under no circumstance shall beer or wine be sold after the hours of serving food have elapsed.

e. The restaurant must serve full-course meals prepared, served and sold daily for immediate consumption on the premises at any time when open for business, from a kitchen or facility inspected and approved by the division of hotels and restaurants of the state department of business and professional regulation or the state department of agriculture and consumer services. Full kitchen facilities shall mean facilities containing commercial grade burners, ovens, range hoods and refrigeration units of such size and capacity to accommodate the seating of the restaurant. Meals prepared off the premises, snacks, prepackaged foods or sandwiches will not be considered full-course meals for purposes of this subsection.

f. The restaurant must be equipped to serve 30 people full-course meals at tables, having 30 chairs, excluding barstools or counter stools.

g. The restaurant must have written menus readily available to patrons. A majority of the food listed in the menu shall be available for consumption while the business is open.

h. The restaurant must have more than 850 square feet of service area.

i. The restaurant operator shall not circumvent the intent of this subsection by an artifice or scheme.

j. There shall be compliance with this Code, including but not limited to requirements of article V of chapter 18 and article II of chapter 86.

k. The restaurant operator shall not employ B-

girls, waitresses, or hostesses as companions to male customers or otherwise to entice, encourage or lure male customers to purchase multiple drinks by sitting at the table or other seating area with male customers with conversation, touching, sexual innuendo or the promise of sexual favors or attention.

(2) For sale and/or on-premises consumption of alcoholic beverages, the 5812 series licensee must obtain a state 4-COP-SRX license and must comply with the following.

a. The sale of beer, wine, and alcoholic beverages must be incidental to the sale and consumption of food. The restaurant must derive at least 51 percent of its gross revenue from the sale of food and nonalcoholic beverages. The required percentage must be maintained on a daily basis. The restaurant operator shall not deflate the price of beer, wine or alcoholic beverage or inflate the price of the served meal from what would be the regular price for the beer, wine, alcoholic beverage or meal served by a similar establishment in the City as a means or method of meeting the minimum required percentage of gross revenue required by this subpart.

b. Records of all purchases and gross sales of food and non-alcoholic beverages must be maintained separately from records of all purchases and gross sales of beer, wine, and alcoholic beverages.

c. The records must be clear and legible and must be kept on the premises. The restaurant operator must immediately comply with any requests by the city to audit or inspect the records for purposes of verifying compliance with the required gross revenue percentage.

d. No beer, wine, or alcoholic beverages shall be sold between the hours of 1:00 a.m. and 8:00 a.m. on any day of the week. Under no circumstance shall beer, wine, or alcoholic beverages be sold after the hours of serving food have elapsed.

e. The restaurant must serve full-course meals prepared, served and sold daily for immediate

consumption on the premises at any time when open for business, from a kitchen or facility inspected and approved by the division of hotels and restaurants of the state department of business and professional regulation or the state department of agriculture and consumer services. Full kitchen facilities shall mean facilities containing commercial grade burners, ovens, range hoods and refrigeration units of such size and capacity to accommodate the seating of the restaurant. Meals prepared off the premises, snacks, prepackaged foods or sandwiches will not be considered full-course meals for purposes of this subsection.

f. The restaurant must have written menus readily available to patrons. A majority of the food listed in the menu shall be available for consumption while the business is open.

g. The restaurant shall have a service area of at least 4,000 square feet and shall be equipped to serve 200 people full-course meals at tables, having at least 200 chairs or seats, excluding barstools or counter stools, at one time. The restaurant shall comply with all state requirements.

h. The restaurant operator shall not circumvent the intent of this subsection by an artifice or scheme.

i. There shall be compliance with this Code, including but not limited to requirements of article V of chapter 18 and article II of chapter 86.

k. The restaurant operator shall not employ B-girls, waitresses, or hostesses as companions to male customers or otherwise to entice, encourage or lure male customers to purchase multiple drinks by sitting at the table or other seating area with male customers with conversation, touching, sexual innuendo or the promise of sexual favors or attention.

(c) Presumption of noncompliance with the provisions of section 6-66(b)(1) or 6-66(b)(2) hereof where applicable.

Two or more of the following activities shall constitute a rebuttable presumption that the provisions of section 6-66(b)(1) hereof have been violated:

- a. People being served beer, wine or alcoholic beverages without full-course meals on three separate occasions during different days within a 30-day time period.
- b. Two or more consecutive inspections by the division of hotels and restaurants of the state department of business and professional regulation or the state department of agriculture and consumer services citing the same or substantially similar critical violations in a one-year period. The term critical shall be interpreted as defined in section 1-201.10(B)(19), Food Code, 2001 Recommendations of the U.S. Public Health Service/Food and Drug Administration, as utilized by state agencies.
- c. Four or more non-consecutive inspections by the division of hotels and restaurants of the state department of business and professional regulation or the state department of agriculture and consumer services citing the same or substantially similar critical violations in a two-year period, that when combined establish a pattern of violations that would lead a reasonable person to believe that the restaurant is operated in disregard to the standards and requirements for the proper and sanitary storage, preparation, processing and/or service of food to the public.
- d. Failure to produce, upon demand of the city code official or police officer, the records required to be maintained to properly ascertain whether the operator is in compliance with the required gross sales percentage of food and non-alcoholic beverages.

(ed) Bars that do not serve food will only be permitted where a C-3 extended liberal commercial zoning exists. These establishments will not be permitted to have entertainment or to allow dancing. When serving food in addition to beverages, a licensee must obtain a 5812 occupational license in addition to the 5813 license. To be issued a 5813 occupational license, the licensee must have a valid state license.

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**Section 2: Repeal of Ordinances in Conflict.**

All ordinances or parts of ordinances in conflict herewith are hereby repealed to the extent of such conflict.

**Section 3: Penalties.**

Every person convicted of a violation of any provision of the Code or any ordinance, rule or regulation adopted or issued in pursuance thereof shall be punished by a civil penalty not to exceed \$500.00 within the discretion of the court or administrative tribunal having jurisdiction. Each act of violation and each day upon which any such violation shall occur shall constitute a separate offense. In addition to the penalty prescribed above, the City may pursue other remedies such as abatement of nuisance, injunctive relief, administrative adjudication and revocation of licenses or permits.

**Section 4: Inclusion in Code.**

The provisions of this ordinance shall be included and incorporated in the Code of Ordinances of the City of Hialeah, as an addition or amendment thereto, and the sections of this ordinance shall be renumbered to conform to the uniform numbering system of the Code.

**Section 5: Severability Clause.**

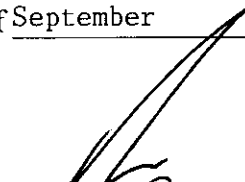
If any phrase, clause, sentence, paragraph or section of this ordinance shall be declared invalid or unconstitutional by the judgment or decree of a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs or sections of this ordinance.

**Section 6:     Effective Date.**

This ordinance shall become effective when passed by the City Council and signed by the Mayor or at the next regularly scheduled City Council meeting, if the Mayor's signature is withheld or if the City Council overrides the Mayor's veto.


PASSED AND ADOPTED this 25th day of September, 2007.

THE FOREGOING ORDINANCE  
OF THE CITY OF HIALEAH WAS  
PUBLISHED IN ACCORDANCE  
WITH THE PROVISIONS OF  
FLORIDA STATUTE 166.041  
PRIOR TO FINAL READING.

  
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Esteban Bovo  
Council President

Attest:

Approved on this 20 day of September, 2007.

  
\_\_\_\_\_  
Rafael E. Granado, City Clerk

  
\_\_\_\_\_  
Mayor Julio Robaina

Approved as to form and legal sufficiency:

  
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William M. Grodnick, City Attorney

~~Strikethrough~~ indicates deletion. Underline indicates addition.

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Ordinance was adopted by a unanimous vote with Councilmembers Bovo, Caragol, Casals-Muñoz, Gonzalez, Hernandez, Miel and Yedra voting "Yes".